

In Re: A. Abdul Salaam Rowther

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SooperKanoon Citation : sooperkanoon.com/787365

Court : Chennai

Decided On : Aug-31-1942

Reported in : AIR1943Mad41; (1942)2MLJ577

Appellant : In Re: A. Abdul Salaam Rowther

Judgement :

ORDER

Horwill, J.

1. The petitioner was convicted under Section 123(1) and Section 42 of the Motor Vehicles Act of permitting his motor vehicle to be used by his driver in a public place.
2. Two points were taken in this petition. The first is that the vehicle was not being 'used', within the meaning of that term in Section 42 (1) and the second is that the petitioner did not 'permit' the driver to use the vehicle.
3. It is true that Chapter IV does deal with the control of transport vehicles and contemplates primarily the control of the carriage of goods for hire or for reward. Section 42 (2) lays down certain rules for determining for the purposes of that chapter whether a transport vehicle is or is not used for carriage of goods for hire or for reward; but Section 42 (1) is more general and prohibits the use of a transport vehicle for any purpose in a public place save in accordance with the conditions of a permit granted or countersigned by proper authority. It is admitted

that to the knowledge of the petitioner there was no permit for the use of the vehicle. The driver took the car to convey himself to the Magistrate's Court--where he was being tried for driving without a license--and back again; and in doing that the driver was certainly using the vehicle.

4. The remaining question is whether the owner can be said to have 'permitted' the use of the vehicle. The verb 'permit' carries with it the meaning that the person actually and knowingly allows the thing to be. done. Mere negligence such as the petitioner is said to have been guilty of by not locking up his vehicle so that the driver could not take it, would not amount to 'permitting' the use of the car. Whether the petitioner actually knew that the driver was going to use the car or not we do not know; but the duty was cast on the prosecution to prove that the petitioner either used or permitted the use of the vehicle. That duty they have not succeeded in discharging. The use to which the vehicle was put was not one in the ordinary course of the petitioner's business; for the driver was using the vehicle to convey himself from the garage to the Court house and back again; and so the petitioner may not have known of the use to which his motor vehicle was being put. The petitioner was therefore entitled to succeed; because the prosecution had failed to prove all the ingredients of the offence with which the petitioner was charged.

5. The petition is allowed and the conviction and sentence set aside. It is ordered that the fine, if paid, be refunded.